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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

17 Defendants.
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CASE NO. 3:18-cr-00577-CRB

**Defendant Stephen Chamberlain's
Motion to Preclude Admission of Mr.
Chamberlain's Handwritten
Notebooks Through Case Agent**

Assigned to Hon. Charles R. Breyer

1 The Government has informed counsel that it intends to introduce into
2 evidence selected pages from spiral notebooks that Mr. Chamberlain wrote in while
3 at Autonomy. These are marked as Exhibits 11673, 11674, 11675, 11676, 11677,
4 and 11678.¹ The Government intends to do so during the testimony of FBI Special
5 Agent Britta Huebsch.

6 The notebooks contain pages of notes relating to Mr. Chamberlain's work at
7 Autonomy. The handwritten notes, however, do not reflect whether they are notes of
8 statements by others, Mr. Chamberlain's thoughts, references to documents, and so
9 forth. The content is vague as to time, place, context, whose words are being written
10 down, and whether any were communicated. The meaning is speculative. And
11 Agent Huebsch has no first hand knowledge to testify about the content. As such,
12 Federal Rule of Evidence counsels against their admission.

13 Rule 403(2) gives the Court "considerable discretion" to exclude documents
14 where the documents "might mislead the jury" and/or where there is a risk that the
15 jury "might misinterpret the evidence." Clearly that is the case here where the
16 Government proffers no witness with knowledge of the notes and the Government
17 seeks to have the jury simply speculate as to their meaning.

18 Consider the following illustrations. The Government seeks to introduce Mr.
19 Chamberlain's scribbles on page 29 of Exhibit 11677:

27 ¹ Attached to this pleading are copies of the portions of the exhibits that the
28 Government has advised counsel it intends to admit.

SUSHOVAN DISCUSSION.

		<u>O/S</u> <u>AMOUNT</u>	
1)	RESELLER DEALS		
	• CARMAX - FSA	\$4.5M	
	- ANGEN	\$9.5M	
	- LILLY	\$2.7M	
	- BAWL / DKO	\$4.1M	
	• MICROTECH - BAN	\$11.5M	
	- DOJ	\$4.2M	
	- CASH	(\$6.3M)	
	• HULTEK - VA	\$10.0M	
	• DISCOVERTECH - BofA	\$7.3M	
	• ITALY - SALES CONSULTING	\$2.4M	
	- AXIUM	\$3.6M	
	- RCA VENTURES	\$2.7M	
	on		
	• REALISE	\$2.0M	
2)	BARTER / SWAP TRANSACTIONS		
	• HULTEK		
	• VMS		
	• MICROTECH.		

Total: \$57.7M.

There is nothing on this page that indicates when Mr. Chamberlain wrote these words down. "Sushovan discussion" is written at the top of the page. There is no indication when these notes were written, whether these notes were written in anticipation of a conversation, whether any discussion actually took place and whether the notes were taken during a discussion, whether there were others present (like auditors); or why Mr. Chamberlain chose to write these words down on paper. The only fact established by the introduction of the standalone notebook is that at some point while he worked at Autonomy, Mr. Chamberlain wrote these words on a piece of paper.

Other excerpts contain even less contextual detail. For example, below is page 177 from Exhibit 11677:

<u>Q1 2010 REVENUE</u>			<u>Notes</u>	
			<u>Term</u>	<u>DE</u>
DISCOVER TECH	- Citi \$5.5m	- 20% upfront, 30% now N10, 50% N120		
"	- AUI \$4.2m	- 25% upfront, balance N90		
CAPAX	- FSA \$4.3m	- payment over several years	19.4	6.8
MICROTECH	- VATICAN \$11.0m	- N90	13.5	-
	- CREDITED DEALS			
ENERGY SOLUTIONS	- \$1.2m	- payment over several years		
CARNIVAL	- \$1.3m	- 33% upfront, 33% N120, 33% N540		
SKANEN	- \$2.7m	- 25% N20, 75% N265		
MERIDIAN	- \$1.5m	- 50% N30, 50% N285		
FILETEK	- \$8.5m			
<u>MACHINERY</u>				
INTERACTION	- \$50K		6.2	6.0

Although some of the words and numbers have been referenced in connection with some of the transactions at issue in this case, there is no indication anywhere on this page (or any surrounding pages) when these words were written or the source of any information reflected by these words. While the words "Q1 2010 Revenue" appear at the top of the page, it contains no information about when or why the notes were prepared, whether the notes were connected to a meeting, who attended any such meeting, or whether the notes were intended to prepare for such a meeting or to record what happened. Again, this page does nothing but show that at some point while he worked for Autonomy, Mr. Chamberlain chose to write these words down on a piece of paper.

1 The same is true for the other pages in the notebooks. Any minimal probative
2 value of notes of Mr. Chamberlain relating to various transactions is far outweighed
3 by the vagueness and “risk of misinterpretation.” Their introduction simply
4 encourages jurors to baselessly speculate about why Mr. Chamberlain chose to write
5 down the words he did at some unspecified time. Agent Huebsch has no personal
6 knowledge about the significance of the words that Mr. Chamberlain chose to write
7 on the page. Like the jury, she too should not be permitted to baselessly speculate
8 about why he did so and what meaning, if any, should be assigned. Any testimony
9 that the case agent *does* provide would be unreliable and only amplify the prejudice
10 arising from the introduction of the notebooks.

11 Here, rather than recorded or written “statements” in the ordinary sense, the
12 Government offers no witnesses to these notes to provide context or clarity.

13 For these reasons, under Rule 403 the Court should preclude the Government
14 from introducing Exhibits 11673, 11674, 11675, 11676, 11677, and 11678.

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16 DATED: May 12, 2024

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